

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

BRIDGET MURPHY,)	
)	
Plaintiff,)	
vs.)	Case No.: 4:16-CV-04255-FJG
)	
A.A. ENGELHARDT,)	
)	
Defendant.)	

ORDER

Currently pending before the Court is defendants' Motion to Dismiss (Doc. # 10), Lynnette Lockhart's Motion to Withdraw As Counsel for Defendants (Doc. #23) and plaintiff's Motion for Leave to File Second Amended Complaint (Doc. # 26).

I. BACKGROUND

Plaintiff's initial Complaint was filed on October 19, 2016. In her Complaint, plaintiff alleged claims against the Missouri State Highway Patrol and officer A.A. Engelhardt for excessive force in violation of 42 U.S.C. § 1983 and state law claims for assault and battery. The Missouri State Highway Patrol filed a Motion to Dismiss alleging that the Eleventh Amendment bars plaintiff's §1983 claim and sovereign immunity bars the plaintiff's state law claims of assault and battery. Plaintiff was initially proceeding pro se in this action. On August 7, 2017, counsel entered an appearance on plaintiff's behalf. The same day, counsel for plaintiff also filed a Motion for Leave to File an Amended Complaint and a Stipulation of Dismissal as to the Missouri Highway Patrol.

II. STANDARD

In French v. Central Credit Services, No. 4:16CV1654RLW, 2017 WL 3105848

(E.D.Mo. July 20, 2017), the Court stated:

Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, the court should freely grant leave to amend a pleading when justice so requires. “[T]he court has broad discretion and will only deny leave to amend in order to avoid undue delay, where there has been bad faith on the part of the plaintiff, when amendment would be futile or when amendment would result in unfair prejudice to the defendants.” Swider v. Hologic, Inc., Civ. No. 12-1547 (DSD/AJB), 2012 WL 6015558 at *2 (D.Minn. Dec. 3, 2012)(citation omitted).

Id. at *1.

III. DISCUSSION

In the instant case, the deadline for filing amended pleadings has not passed and plaintiff indicates that there is no opposition from defendant to filing an amended complaint. Accordingly, for good cause shown, plaintiff’s Motion for Leave to File an Amended Complaint is hereby **GRANTED**. Plaintiff should file an Amended Complaint within five (5) days of the date of the Order. In the motion for leave to file an Amended Complaint, plaintiff also requests leave to file her initial Fed.R.Civ.P. 26 disclosures out of time. For good cause shown and with no opposition indicated, plaintiff shall also file her Fed.R.Civ.P. 26 disclosures within five (5) days of the date of this Order.

In the Motion requesting leave to file an Amended Complaint, plaintiff also requests that the Court enter an Amended Mediation and Assessment Order, so that a new mediation date can be scheduled. Counsel are directed to contact the Mediation and Assessment Program office directly in order to schedule a new mediation date. Plaintiff has also requested that the Court enter an Amended Scheduling and Trial Order. Plaintiff’s counsel states that he has conferred with defendant’s counsel and the

parties are in agreement as to the revised dates suggested. The Court will review the dates proposed by the parties and will issue an Amended Scheduling and Trial Order.

As the parties have now stipulated to the dismissal of the Missouri Highway Patrol as a defendant in the case, the Court hereby **DENIES AS MOOT** defendant's Motion to Dismiss (Doc. # 10).

Finally, the Court **GRANTS** Lynnette Lockhart's Motion to Withdraw as Counsel as other counsel have entered their appearance for defendant.

IV. CONCLUSION

Accordingly, for the reasons stated above, the Court hereby **DENIES AS MOOT** Defendant's Motion to Dismiss (Doc. # 10), **GRANTS THE MOTION** to Withdraw as Counsel (Doc # 23) and **GRANTS IN PART** plaintiff's Motion for Leave to File an Amended Complaint (Doc. # 26). Plaintiff shall file her Amended Complaint and Fed.R.Civ.P. 26 disclosures within five (5) days of the date of this Order. Counsel are directed to contact the MAP Coordinator directly to reschedule the mediation.

Date: August 15, 2017
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge